IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6770 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

INDUBEN JAYANTILAL UMRIGAR

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 6770 of 2004

MR AJ PATEL for Petitioner No. 1

MR NAGESH SOOD, LD.AGP for Respondent No. 1-2

MR RM CHHAYA for Respondent No. 3

MR PJ VYAS for Respondent No. 4

NOTICE SERVED BY DS for Respondent No. 5

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 02/08/2004

ORAL JUDGEMENT

1. Rule. Mr.P.J.Vyas, the learned advocate appears and waives service of rule on behalf of respondent No.4, Mr.Nagesh Sood, learned AGP waives service of rule on behalf of respondents No.1 and 2, and Mr.R.M.Chhaya, the learned advocate waives service of rule on behalf of respondents No.3 and 5. With the consent of parties, the matter is taken up for final hearing today.

2. In this petition under Article 227 of the Constitution of India, the petitioner has challenged the legality and validity of the judgment and order dated 14th May, 2004, passed by the learned Secretary (Appeals), Revenue Department, State of Gujarat, passed in Revision Application No.2 of 2003 in dismissing the same and confirming the order passed by the Deputy Collector, Choryasi Prant, Surat, dated 27.11.2002 permitting the division of the land in question into two parts as desired by respondent No.4.

3. The land bearing Old Survey No.62 (New Survey No.48) ad-measuring 1 Hectare 79-00 sq.mts. situated at village Vesu, Taluka Choryasi, District Surat, was owned by one Jadavbhai Jogibhai. It appears that, the said Jadavbhai Jogibhai had no male issue and, therefore, on his death, the land was inherited by his two daughters, (1) Hansiben, wife of Ramabhai Lalubhai and (2) Paniben, wife of Bhikabhai Keshavbhai. On the death of Paniben Bhikhabhi, the land which had come to the share of Paniben, was inherited by her husband Bhikhabhai Keshavbhai, and Mutation Entry No.1881 was effected in the revenue record on 1.5.93 and subsequently it was certified.

4. It is a case of the petitioner that, the said Bhikabhai Keshavbhai had executed a will on 2.8.96 in favour of the petitioner and bequeathed the properties mentioned in the said will including the land in question to the petitioner. On the death of Bhikabhai Keshavbhai, the name of the petitioner came to be entered into record of rights vide Mutation Entry No.2247 and the said entry was certified on 25.11.98. It appears that, the said Mutation Entry No.2247 was challenged by one of the daughters of deceased Jadavbhai Jogibhai - the original land owner, before the Deputy Collector, and the Deputy Collector, Choryasi Prant, Surat, has set aside the Entry No.2247.

5. Being aggrieved and dissatisfied with the order passed by the Deputy Collector, Choryasi Prant, Surat, in cancelling the Entry No.2247, the petitioner preferred appeal before the Collector, Surat, which came to be

dismissed. Against which the petitioner preferred revision application No. 100/2001 before the Secretary (Appeals), Revenue Department, State of Gujarat, which also came to be dismissed. Against which the petitioner had preferred Special Civil Application No. 6768 of 2004 before this Court which is allowed and an order is passed that Entry No.2247 will be subject to the ultimate outcome of the Suit No.81 of 2003 in which the will is challenged and that the said entry would be only for physical purpose and would not confer any right, title or interest in favour of the petitioner.

6. It appears that, in the meantime, the respondent No.4 herein approached the Deputy Collector, Choryasi Prant, Surat, for division of the land in question into two parts, and the Deputy Collector, Choryasi Prant, Surat, on the basis of the statements recorded by the Circle Officer, Athwa, Tal.Choryasi, permitted the division of the land in question into two parts as desired by respondent No.4 herein by order dated 27.11.2002, and on the basis of the order dated 27.11.2002, necessary Mutation Entry being Entry No.2940 came to be effected in Village Form No.6 on 28.11.2002 and the said entry came to be certified on 31.12.2002.

7. It is the case of the petitioner that, before permitting the division of the land in question into two parts, as desired by the respondent No.4, the statements of the petitioner was not recorded nor any consent of the petitioner was obtained though the name of the petitioner was already there in the record of rights as a joint owner.

8. Being aggrieved and dissatisfied with the order passed by the Deputy Collector, Choryasi Prant, Surat, dated 27.11.2202, the respondent No.3 preferred revision application before the Secretary (Appeals), Revenue Department, State of Gujarat, being Revision Application No.2 of 2003 in which the petitioner was also joined as a party respondent No.2. The petitioner submitted her written submissions, and ultimately, the Secretary (Appeals), Revenue Department, State of Gujarat, by its judgment and order 14.5.2004 dismissed the aforesaid revision application, and confirmed the order passed by the Deputy Collector, Choryasi Prant, Surat, dated 27.11.2002.

9. Being aggrieved and dissatisfied with the judgment and order passed by the Secretary (Appeals), Revenue Department, State of Gujarat, passed in revision application No.2 of 2003, the petitioner had preferred

present Special Civil Application under Article 227 of the Constitution of India, by contending inter-alia that the order passed by the Dy.Collector, Choryasi Prant, Surat, dated 27.11.2002 is absolutely illegal and against the principles of natural justice. It is also further submitted on behalf of the petitioner that, the Dy.Collector has no jurisdiction to partition the land in question and it is only the Civil Court had a jurisdiction.

10. Shri Patel, the learned advocate appearing on behalf of the petitioner has further submitted that, while passing the impugned order, the revisional authority has also considered the order passed by the Dy.Collector in cancelling the Entry No.2247, and has observed that, the outcome of revision application No.2 of 2003 is depending upon the judgment and order passed by him passed in revision application No.100/03 in confirming the order passed by Dy.Collector and Collector in respect to Entry No.2247, and when the Entry No.2247 was restored, Shri Patel requested to allow the present Special Civil Application.

11. Shri Patel has also further submitted that, the respondent No.1 has already filed a Regular Civil Suit No.85 of 2003 before the Civil Court, Surat, which is still pending, and therefore also, the judgment and order passed by the revisional authority is required to be quashed and set aside.

12. Shri P.J.Vyas, the learned advocate appearing on behalf of the respondent No.4 has submitted that, the judgment and order passed by the revisional authority in dismissing the same and confirming the order passed by Dy.Collector, Choryasi Prant, Surat, dated 27.11.2002 is just and proper and in accordance with law. He has further submitted that, as the respondent No.4 was having independent right and share in the land in question, she was justified in making an application before the Dy.Collector, Choryasi Prant, Surat, for division of the land in question and, therefore, the order passed by the Dy.Collector is just and proper and in accordance with law and requested to dismiss the present Special Civil Application.

13. Heard the learned advocates appearing for the parties.

14. While passing the impugned judgment and order dated 10.5.2004, in dismissing the revision application and confirming the order passed by Dy.Collector, Choryasi

Prant, Surat dated 27.11.2002, the revisional authority has relied upon the order passed in revision application No.100/01 in respect to Entry No.2247. The judgment and order passed by the revisional authority passed in revision application No.100/01 is quashed and set aside by this Court (Coram: M.R.Shah, J.) passed in Special Civil Application No.6768 of 2004 and Entry No.2247 is restored subject to the ultimate outcome of the Regular Civil Suit No.81 of 2003. It is also required to be noted that, another suit being Regular Civil Suit No.85 of 2003 is also pending which is filed by the respondent No.1 herein. The Dy.Collector has no jurisdiction to make the division of the land in question, and it is ultimately for the Civil Court to pass an appropriate decree with regard to the partition of the land in question. In the present case, as stated hereinabove, two suits are pending between the parties; one being Regular Civil Suit No.81 of 2003 and another being Regular Civil Suit No.85 of 2003, and under the circumstances, unless and until the judgment and decree passed by the competent court, the Secretary (Appeals) ought not to have passed the order confirming the order passed by Dy.Collector, Choryasi Prant, Surat, for division of the land in question.

15. It is true that the Secretary (Appeals) has passed the order, that the order passed by Dy.Collector, Choryasi Prant, Surat dated 27.11.2002 would be subject to the ultimate outcome of the civil suit pending between the parties, but the revisional authority has failed to consider the fact that, by confirming the order dated 27.11.2002 passed by Dy.Collector, Choryasi Prant, Surat, irreversible situation may arise.

16. Under the circumstances, while allowing the revision application and quashing and setting aside the order passed by Dy.Collector, Choryasi Prant, Surat, dated 27.11.2002, the revisional authority ought to have passed an order that the division of the lands in question will be subject to the judgment and decree that may be passed by the Civil Court in the suits pending between the parties.

17. For the reasons stated above, the judgment and order passed by the revisional authority i.e. Secretary (Appeals), Revenue Department, State of Gujarat, dated 14.5.2004 passed in revision application No.2 of 2003, and also the order passed by Dy.Collector, Choryasi Prant, Surat, dated 27.11.2002 with respect to the land in question are hereby quashed and set aside. However, it is observed and directed that necessary division may

be made subject to the outcome of the judgment and decree that may be passed by the Civil Court in Regular Civil Suit No.81 of 2003 and Regular Civil Suit No.85 of 2003.

18. With these observations and directions, the present Special Civil Application is accordingly allowed. Rule is made absolute to the aforesaid extent with no order as to costs.

(M.R. Shah, J.)

syed/